

**BOARD OF EQUALIZATION****BUSINESS TAXES COMMITTEE MEETING MINUTES**

HONORABLE JOHN CHIANG, COMMITTEE CHAIR

450 N STREET, SACRAMENTO

MEETING DATE: JANUARY 4, 2000, TIME: 1:30 P.M.

ACTION ITEMS & STATUS REPORT ITEMS**Agenda Item No: 1****Title: Proposed Regulatory Changes to Clarify Application of Tax to Electric Signs (Regulations 1521 and 1660)****Issue/Topic:**

Should Regulation 1521, *Construction Contractors*, and Regulation 1660, *Leases of Tangible Personal Property – in General*, be amended to clarify the application of tax to sales and leases of electric signs?

Committee Discussion:Action 1 – Consent

Staff provided to the Committee a copy of revised text for Regulation 1521 (c)(12). The text was prepared by staff and industry immediately prior to the Committee meeting in order to clarify the language originally proposed. There was no discussion of this agenda item.

Action 2 – Application of Tax to Leases of On-Premise Electric Signs

The Committee was addressed by Mr. Mark Gastineau of Young Electric Sign Company, Mr. Jeff Aran of the Sign Users Council of California, and Mr. Robert Aran of the California Electric Sign Association. All speakers urged approval of the industry proposal to amend Regulation 1660 to exclude from taxable lease receipts charges for payment or reimbursement of personal property taxes and for mandatory maintenance and insurance charges. Staff pointed out the personal property tax issue was already addressed by the Committee on November 17, 1999, with no amendments to Regulation 1660 approved. Some Committee Members noted that such a change would require new legislation, and suggested that industry may wish to pursue this avenue.

Action 3 – Authorization to Publish – Amendment to Regulation 1521Action 4 – Authorization to Publish – Amendment to Regulation 1660

There was no discussion of action items 3 and 4.

Committee Action/Recommendation/Direction:Action 1 – Consent

The Committee authorized staff to add subdivision (c)(12), *On-Premise Electric Signs*, as a proposed amendment to Regulation 1521, using language presented to the Committee at the Committee meeting.

Action 2 – Application of Tax to Leases of On-Premise Electric Signs

The Committee approved staff's recommendation to make no amendments to Regulation 1660.

Action 3 – Authorization to Publish – Amendment to Regulation 1521

The Committee directed staff to request authority to publish amendments to Regulation 1521 as discussed above. The operative date will be October 1, 2000, and implementation will take place upon approval by the Office of Administrative Law. A copy of the proposed amendments is attached.

Action 4 – Authorization to Publish – Amendment to Regulation 1660

The Committee took no action on this item.

Agenda Item No: 2**Title: Proposed Revisions to Audit Manual Chapter 1 (Introduction)****Issue/Topic:**

Should staff's proposed revisions to Chapter 1, *Introduction*, be incorporated into the Sales and Use Tax Department's Audit Manual?

Committee Discussion:Action 1, ConsentAction 2, Authorization to publish

There was no discussion of action items 1 and 2.

Committee Action/Recommendation/Direction:Action 1, Consent

The Committee authorized staff to incorporate the proposed revisions into Chapter 1 of the Sales and Use Tax Department's Audit Manual. The authorized revisions include staff's final changes to Audit Manual Section 0101.75, *Section 6596 Guidelines for Taxpayer Correspondence – Written Advice Provided in a Prior Audit*, and Audit Manual Section 0101.77, *Relief of Interest*. A minor correction was made in Audit Manual Section 0101.75 to remove an unintended wording change. Proposed new Audit Manual Section 0101.77 will not be added to Chapter 1

until clean-up legislation is enacted to include audit determinations in Revenue and Taxation Code section 6593.5 relief of interest provisions.

Action 2, Authorization to publish

The Committee authorized staff to publish the Audit Manual Chapter 1 revisions.

Agenda Item No: 3

Title: Proposed Revisions to Audit Manual Chapter 2 (Field Audit Reports)

Issue/Topic:

Should staff's proposed revisions to Chapter 2, *Preparation of Field Audit Reports*, be incorporated into the Sales and Use Tax Department's Audit Manual?

Committee Discussion:

Action 1, Consent

Action 2, Authorization to Publish

There was no discussion of action items 1 and 2.

Committee Action/Recommendation/Direction:

Action 1, Consent

The Committee authorized staff to incorporate the proposed revisions into Chapter 2 of the Sales and Use Tax Department's Audit Manual.

Action 2, Authorization to Publish

The Committee authorized staff to publish the Audit Manual Chapter 2 revisions.

Agenda Item No: 4

Title: Proposed Revisions to Audit Manual Chapter 3 (Audit Working Papers)

Issue/Topic:

Should staff's proposed revisions to Chapter 3, *Audit Working Papers*, be incorporated into the Sales and Use Tax Department's Audit Manual?

Committee Discussion:

Action 1, Consent

Action 2, Authorization to publish

There was no discussion of action items 1 and 2.

Committee Action/Recommendation/Direction:

Action 1, Consent

The Committee authorized staff to incorporate the proposed revisions into Chapter 3 of the Sales and Use Tax Department's Audit Manual.

Action 2, Authorization to publish

The Committee authorized staff to publish the Audit Manual Chapter 3 revisions.

Agenda Item No: 5**Title: Proposed Revisions to Audit Manual Chapter 13 (Statistical Sampling)****Issue/Topic:**

Should staff's and interested parties' proposed revisions to Chapter 13, *Statistical Sampling*, be incorporated into the Sales and Use Tax Department's Audit Manual?

Committee Discussion:

Committee Agenda Item No. 6, Proposed Revisions to Audit Manual Chapter 4 (General Auditing Procedures) was taken up by the Committee prior to Agenda Item No. 5. Some of the issues discussed in connection with Item No. 6 had relevance to Item No. 5, as described under Agenda Item No. 6.

There was no discussion of any of the Agenda Item No. 5 action items.

Committee Action/Recommendation/Direction:

Action 1, Consent

The Committee authorized staff to incorporate the proposed revisions into Chapter 13 of the Sales and Use Tax Department's Audit Manual, as reflected in Exhibit 2 of the issue paper except for Section 1304.15, *Stratified Random Sampling*.

Action 2, Requirement for taxpayers to provide electronic/computerized records, if maintained, for auditing purposes (Audit Manual Section 1304.35)

Action 6, XYZ letter non-responses (Audit Manual Section 1302.25(c))

Action 7, Missing or unreadable documents (Audit Manual Section 1302.25(g))

Action 8, Include credit invoices, credit memos, and debit memos in the test, if they are included in the population (Audit Manual Section 1302.25(f))

Action 10, Allow more lenient evaluation standards for tests that include both overpayments and underpayments in the sample results (Audit Manual Section 1302.15)

As noted on staff's revised agenda for Item No. 5 (revised January 4, 2000), interested parties now agree with staff's revised proposed language for action items 2, 6, 7, 8 and 10, as detailed on the revised agenda. (Interested parties and staff agree in concept on Action 8 and are continuing to work on revising language.) The Committee authorized staff to incorporate the proposed revisions into Chapter 13 of the Sales and Use Tax Department's Audit Manual.

Action 3, Improvement of the Board's confidence level and confidence interval standards (Audit Manual Sections 1305.15 and 1308.05)

Action 4, De minimis standard percentage of error (Audit Manual Section 1305.15)

Action 5, Use of the lower bound of the confidence interval to project statistical sample results (Audit Manual Section 1306.20)

Action 9, Evaluate statistical samples that contain both overpayments and underpayments by using the absolute value of the differences (Audit Manual Section 1305.15)

Actions 3, 4, 5, 9 and Section 1304.15 (*Stratified Random Sampling*) are items on which staff and interested parties have not reached agreement. A motion to table these items failed to pass. The Committee then directed staff to continue to work with interested parties on resolving these remaining issues.

Action 11, Approval to publish Chapter 13

The Committee authorized staff to incorporate the proposed revisions into Chapter 13 of the Sales and Use Tax Department's Audit Manual on which staff and interested parties are in agreement (action items 1, 2, 6, 7, 8 and 10).

Agenda Item No: 6

Title: Proposed Revisions to Audit Manual Chapter 4 (General Auditing Procedures)

Issue/Topic:

Should staff's and interested parties' proposed revisions to Chapter 4, *General Auditing Procedures*, be incorporated into the Sales and Use Tax Department's Audit Manual?

Committee Discussion:

This Committee Agenda item was taken up by the Committee prior to Agenda Item No. 5.

The following speakers addressed the Committee:

Mr. Al Koch, Municipal Resource Consultants
Mr. David Jones, League of California Cities
Mr. Glenn Bystrom, Ernst & Young
Mr. David McPherson, City of San Jose
Mr. Phil Lor, Viacom, Inc.
Ms. Anne Blue, City of Los Angeles
Dr. Will Yancey, Ryan & Company

Staff noted that the League of California Cities and a number of individual cities have requested that the Committee postpone taking action on the proposed revisions to both Chapters 4 and 13. Mr. Koch, Mr. Jones, Mr. McPherson and Ms. Blue expressed the concern that, since they were not provided with copies of the issue papers until December 22, 1999, they have not had time to review the materials, assess the impact to local jurisdictions or meet with staff.

Action 1, Consent

There was no discussion of this item.

Action 2, Requirement for taxpayers to provide electronic/computer records, if maintained, for auditing purposes (Audit Manual Section 0403.1)

Action 6, XYZ letter non responses (Audit Manual Sections 0405.20 and 0409.51)

Action 7, Missing or unreadable documents (Audit Manual Section 0405.20(I))

As noted on staff's revised agenda for Item No. 6 (revised January 4, 2000), interested parties now agree with staff's revised proposed language for action items 2, 6 and 7, as detailed on the revised agenda. There was no discussion of these items.

Action 3, De minimis standard percentage of error (Audit Manual Section 0405.20(d))

Action 4, Preclude the use of a prior audit de minimis percentage of error in a current audit (Audit Manual Section 0405.33)

Action 5, Use of the coefficient of variation to project non-statistical sample results (Audit Manual Section 0405.20(d))

Action items 3, 4 and 5 are items on which staff and interested parties have not reached agreement. Some Committee Members expressed a desire to obtain an academic review of the proposed revisions. There were dissenting opinions, leading to a discussion of whether the issues in dispute constituted matters of statistical theory or tax policy. Staff reported on the estimated time required to process the paperwork authorizing a review by staff of the University of California or a California State College – at least nine weeks, as opposed to an outside bid process, requiring about nine months.

Mr. Bystrom summarized his position on action items 3 and 5. Mr. Lor expressed his opinion on action item 3.

Committee Action/Recommendation/Direction:

Action 1, Consent

The Committee authorized staff to incorporate the proposed revisions into Chapter 4 of the Sales and Use Tax Department's Audit Manual, as reflected in Exhibit 2 of the issue paper.

Action 2, Requirement for taxpayers to provide electronic/computerized records, if maintained, for auditing purposes (Audit Manual Section 0403.10)

Action 6, XYZ letter non-responses (Audit Manual Section 0405.20 and 0409.51)

Action 7, Missing or unreadable documents (Audit Manual Section 0405.20(I))

As noted on staff's revised agenda for Item No. 5 (revised January 4, 2000), interested parties now agree with staff's revised proposed language for action items 2, 6 and 7, as detailed on the revised agenda. The Committee authorized staff to incorporate the proposed revisions into Chapter 4 of the Sales and Use Tax Department's Audit Manual.

Action 3, De minimis standard percentage of error (Audit Manual Section 0405.20(d))

Action 4, Preclude the use of a prior audit de minimis percentage of error in a current audit (Audit Manual Section 0405.33)

Action 5, Use of the coefficient of variation to project non-statistical sample results (Audit Manual Section 0405.20(d))

The Committee voted to table further discussion of items 3, 4 and 5.

Action 8, Approval to Publish Chapter 4

The Committee authorized staff to incorporate the proposed revisions into Chapter 4 of the Sales and Use Tax Department's Audit Manual on which staff and interested parties are in agreement (action items 1, 2, 6, and 7), and to publish the revised chapter.

Approved: /s/ J. E. Speed for
Honorable John Chiang, Committee Chair

/s/ J. E. Speed for
E. L. Sorensen, Jr., Executive Director

BOARD APPROVED

at the 1/6/2000 Board Meeting

/s/ Michele Stuart for
Janice Masterton, Chief
Board Proceedings Division

Regulation 1521. Construction Contractors.

Reference: Sections 6006 - 6010, 6012, 6012.2., 6012.6, 6012.8, 6012.9, 6015, 6016, 6016.3, 6016.5, 6055, 6091-6095, 6203.5, 6241-6246, 6276, 6276.1, 6379, 6384, 6386, 6421, 6901.5, Revenue and Taxation Code.

(a) Definitions.

(1) Construction Contract.

(A) "Construction contract" means and includes a contract, whether on a lump sum, time and material, cost plus, or other basis, to:

1. Erect, construct, alter, or repair any building or other structure, project, development, or other improvement on or to real property, or
2. Erect, construct, alter, or repair any fixed works such as waterways and hydroelectric plants, steam and atomic electric generating plants, electrical transmission and distribution lines, telephone and telegraph lines, railroads, highways, airports, sewers and sewage disposal plants and systems, waterworks and water distribution systems, gas transmission and distribution systems, pipelines and other systems for the transmission of petroleum and other liquid or gaseous substances, refineries and chemical plants, or
3. Pave surfaces separately or in connection with any of the above works or projects, or
4. Furnish and install the property becoming a part of a central heating, air-conditioning, or electrical system of a building or other structure, and furnish and install wires, ducts, pipes, vents, and other conduit imbedded in or securely affixed to the land or a structure thereon.

(B) "Construction contract" does not include:

1. A contract for the sale or for the sale and installation of tangible personal property such as machinery and equipment, or
2. The furnishing of tangible personal property under what is otherwise a construction contract if the person furnishing the property is not responsible under the construction contract for the final affixation or installation of the property furnished.

(2) Construction Contractor. "Construction contractor" means any person who for himself or herself, in conjunction with, or by or through others, agrees to perform and does perform a construction contract. "Construction contractor" includes subcontractors and specialty contractors and those engaged in such building trades as carpentry, bricklaying, cement work, steel work, plastering, drywall installation, sheet metal work, roofing, tile and terrazzo work, electrical work, plumbing, heating, air-conditioning, elevator installation and construction, painting, and persons installing floor coverings, including linoleum, floor tile, and wall-to-wall carpeting, by permanently affixing such coverings to a floor. "Construction contractor" includes any person required to be licensed under the California Contractors' State License Law (Business & Professions Code Sections 7000 et seq.), and any person contracting with the United States to perform a construction

contract, whether such persons are formed or organized under the laws of this state, or another state or country.

(3) United States Construction Contractor. “United States construction contractor” means a construction contractor who for himself or herself, in conjunction with, or by or through others, agrees to perform and does perform a construction contract for the United States Government.

(4) Materials. “Materials” means and includes construction materials and components, and other tangible personal property incorporated into, attached to, or affixed to, real property by contractors in the performance of a construction contract and which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of the real property. A list of typical items regarded as materials is set forth in Appendix A.

(5) Fixtures. “Fixtures” means and includes items which are accessory to a building or other structure and do not lose their identity as accessories when installed. A list of typical items regarded as fixtures is set forth in Appendix B.

(6) Machinery and Equipment. “Machinery and equipment” means and includes property intended to be used in the production, manufacturing or processing of tangible personal property, the performance of services or for other purposes (e.g., research, testing, experimentation) not essential to the fixed works, building, or structure itself, but which property incidentally may, on account of its nature, be attached to the realty without losing its identity as a particular piece of machinery or equipment and, if attached, is readily removable without damage to the unit or to the realty. “Machinery and equipment” does not include junction boxes, switches, conduit and wiring, or valves, pipes, and tubing incorporated into fixed works, buildings, or other structures, whether or not such items are used solely or partially in connection with the operation of machinery and equipment, nor does it include items of tangible personal property such as power shovels, cranes, trucks, and hand or power tools used to perform the construction contract. A list of typical items regarded as machinery and equipment together with a list of typical items not regarded as machinery and equipment is set forth in Appendix C.

(7) Time and Material Contract. “Time and material contract” means a contract under which the contractor agrees to furnish and install materials or fixtures, or both, and which sets forth separately a charge for the materials or fixtures and a charge for their installation or fabrication.

(8) Lump Sum Contract. “Lump sum contract” means a contract under which the contractor for a stated lump sum agrees to furnish and install materials or fixtures, or both. A lump sum contract does not become a time and material contract when the amounts attributable to materials, fixtures, labor, or tax are separately stated in the invoice.

(b) Application Of Tax.

(1) United States Construction Contractors.

(A) Materials and Fixtures. United States construction contractors are consumers of materials and fixtures which they furnish and install in the performance of contracts with the United States Government. Either the sales tax or the use tax applies with respect to sales of tangible personal property (including materials, fixtures, supplies, and equipment) to contractors for use in the performance of such contracts with the United States for the construction of improvements on or to real property in this state. The fact that the contract may provide principally for the manufacture or acquisition of tangible personal property is immaterial. The sales tax, but not the use tax, applies even though the contractor purchases the property as the agent of the United States.

(B) Machinery and Equipment. United States contractors are retailers of machinery and equipment furnished in connection with the performance of a construction contract with the United States Government. Tax does not apply to sales of machinery and equipment to United States contractors or subcontractors, provided title to the property passes to the United States before the contractor makes any use of it. Such sales are sales for resale, and the purchasing contractor may issue a resale certificate. A contractor who uses the machinery or equipment before title passes to the United States is the consumer of that machinery or equipment and either sales tax or use tax applies with respect to the sale to or the use by the contractor.

(2) Construction Contractors Other than United States Construction Contractors.

(A) Materials.

1. In General. Construction contractors are consumers of materials which they furnish and install in the performance of construction contracts. Either sales tax or use tax applies with respect to the sale of the materials to or the use of the materials by the construction contractor.

2. When Contractor is Seller. A construction contractor may contract to sell materials and also to install the materials sold. If the contract explicitly provides for the transfer of title to the materials prior to the time the materials are installed, and separately states the sale price of the materials, exclusive of the charge for installation, the contractor will be deemed to be the retailer of the materials.

In the case of a time and material contract, if the contractor bills his or her customer an amount for "sales tax" computed upon his or her marked up billing for materials, it will be assumed, in the absence of convincing evidence to the contrary, that he or she is the retailer of the materials.

If the sale occurs in this state, the sales tax applies to the contractor's (retailer's) gross receipts from the sale of the materials. If the sale occurs prior to the time the property is brought into this state, the contractor's (retailer's) customer is the consumer and his or her use (unless otherwise exempt) is subject to use tax measured by the sales price. The contractor must collect the use tax and pay it to this state.

(B) Fixtures.

1. In General. Construction contractors are retailers of fixtures which they furnish and install in the performance of construction contracts and tax applies to their sales of the fixtures.

2. Measure of Tax.

a. In General. If the contract states the sale price at which the fixture is sold, tax applies to that price. If the contract does not state the sale price of the fixture, the sale price shall be deemed to be the cost price of the fixture to the contractor.

b. Determining Cost Price. If the contractor purchases the fixtures in a completed condition, the cost price is deemed to be the sale price of the fixture to him or her and shall include any manufacturer's excise tax or import duty imposed with respect to the fixture prior to its sale by the contractor.

If the contractor is the manufacturer of the fixture, the cost price is deemed to be the price at which similar fixtures in similar quantities ready for installation are sold by him or her to other contractors.

If similar fixtures are not sold to other contractors ready for installation, then the cost price shall be deemed to be the amount stated in the price lists, bid sheets or other records of the contractor.

If the sale price cannot be established in the above manner and the fixture is manufactured by the contractor, the cost price shall be deemed to be the aggregate of the following:

- [1] Cost of materials, including such items as freight-in and import duties,
- [2] Direct labor, including fringe benefits and payroll taxes,
- [3] Specific factory costs attributable to the fixture,
- [4] Any manufacturer's excise tax,
- [5] Pro rata share of all overhead attributable to the manufacture of the fixture, and
- [6] Reasonable profit from the manufacturing operations which, in the absence of evidence to the contrary, shall be deemed to be 5 percent of the sum of the preceding factors.

Jobsite fabrication labor and its prorated share of manufacturing overhead must be included in the sale price of the fixture. Jobsite fabrication labor includes assembly labor performed prior to attachment of a component or a fixture to a structure or other real property.

3. Exceptions - Leased Fixtures. In some instances the construction contractor may furnish and install a fixture for a person, other than the owner of the realty, who intends to lease the fixture in place as tangible personal property as provided in Section 6016.3 of the Revenue and Taxation Code and pay tax measured by rental receipts.

In this case the construction contractor may take a resale certificate from the lessor at the time of the transaction and the sale to the lessor will be considered to be a sale for resale. The resale certificate should indicate that the fixture is purchased for resale by the purchaser as tangible personal property under Section 6016.3 of the Revenue and Taxation Code.

(C) Machinery and Equipment.

1. In General. Construction contractors are retailers of machinery and equipment even though the machinery and equipment is furnished in connection with a construction contract. Tax applies to the contractor's gross receipts from such sales.

2. Measure of Tax.

a. In General. Tax applies to the gross receipts from the sale of machinery and equipment furnished and installed by a construction contractor. If the contract calls only for the furnishing and installation of machinery and equipment, tax applies to the total contract price less those charges excludible from gross receipts under Section 6012 of the Revenue and Taxation Code.

b. Lump Sum Contracts - Determining Gross Receipts. If the contract is for a lump sum and includes the furnishing and installation of materials, fixtures, and machinery and equipment, the gross receipts from the sale of the machinery and equipment shall be the price at which similar quantities ready for installation are sold at retail delivered in the market area where the installation takes place.

If there is no such retail price for the machinery and equipment, then the gross receipts shall be determined from the contracts, price lists, bid sheets, or other records of the contractor.

If the gross receipts cannot be established in the above manner and the machinery and equipment is manufactured by the contractor, the gross receipts from the sale shall be the aggregate of the following:

- [1] Cost of materials, including such items as freight-in and import duties,
- [2] Direct labor, including fringe benefits and payroll taxes,
- [3] Specific factory costs attributable to the machinery or equipment,
- [4] Any manufacturer's excise tax,
- [5] Pro rata share of all overhead attributable to the machinery or equipment, including overhead attributable to manufacturing, selling, contracting, and administration, and
- [6] Reasonable profit from the manufacture and sale of the machinery or equipment which, in the absence of evidence to the contrary, shall be deemed to be 5 percent of the sum of the preceding factors.

Jobsite fabrication labor and its prorated share of manufacturing overhead must be included in the sale price of the machinery or equipment. Jobsite fabrication labor includes assembly labor performed prior to attachment of a component or the machinery or equipment to a structure or other real property.

(D) Cost Plus A Fee Contracts. When a contractor enters into a construction contract for a cost plus a fee or time and materials plus a fee, whether the fee is a lump sum or a percentage of costs,

the fee is not included in the measure of tax. When the contractor is the manufacturer of the fixtures or machinery and equipment, the “cost price” of the fixtures and the gross receipts from the sale of the machinery and equipment shall be determined in accordance with (B) and (C) above.

(3) Miscellaneous Sales by Contractors. In addition to sales of fixtures and machinery and equipment, tax applies to all retail sales by contractors of tangible personal property, including parts, supplies, tools, construction equipment, buildings severed or to be severed by the contractor, and furniture, including furniture sold with a building, even though the building is sold “in place.”

(4) Permits. Contractors engaged solely in performing construction contracts which do not involve the sale and installation of fixtures and who do not also engage in business as sellers or retailers are not required to hold seller’s permits. However, if a contractor is a seller or retailer because he or she makes sales of fixtures, materials, or machinery and equipment, or other tangible personal property either in connection with or as part of a construction contract, or otherwise, he or she is required to hold a seller’s permit.

(5) Supplies and Tools for Self-Use. Contractors are the consumers of supplies such as oxygen, acetylene, gasoline, acid, thread-cutting oil, and tools and parts for tools, which they use in their business, and the tax applies to the sale of such supplies and tools to contractors.

(6) Exemption Certificates.

(A) Resale Certificates. Contractors holding valid seller’s permits may purchase fixtures and machinery and equipment for resale by issuing resale certificates to their suppliers. They may not purchase materials for resale unless they are also in the business of selling materials.

A contractor cannot avoid liability for sales or use tax on materials or fixtures furnished and installed by him or her by taking a resale certificate from the prime contractor, interior decorators, designers, department stores, or others. However, under the circumstances described in subsection (b)(2)(B)3., a contractor may take a resale certificate for fixtures furnished and installed by him or her for a person other than the owner of the realty.

(B) Exemption Certificates for Out-of-State Use. Sales tax does not apply to sales of tangible personal property to a construction contractor who holds a valid California seller’s permit when the property is used by the contractor outside this state in his or her performance of a contract to improve real property and as a result of such use the property is incorporated into and becomes a part of real property located outside this state. This exemption is available only if at the time of the purchase the contractor certifies in writing to the seller that he or she holds a valid California seller’s permit (giving the number of that permit and identifying the property purchased) and states that the property will be used in the manner stated above. The certificate must be signed by the contractor or an authorized employee. Such a certification may appear in the body of a purchase order which bears the signature of the purchaser. Any certificate given subsequent to the time of purchase will not be recognized.

If the property purchased under a certificate is used by the contractor in any other manner or for any other purpose than stated in the certificate, the contractor shall be liable for sales tax as if he or she were a retailer making a retail sale of the property at the time of such use, and the sale price of the property to him or her shall be deemed the gross receipts from the sale.

(C) Deductions for Tax-Paid Purchases Resold. A contractor may claim a “tax-paid purchases resold” deduction for any property of which he or she is the retailer when he or she has reimbursed his or her vendor for tax which the vendor is required to pay to the State or has paid the use tax with respect to the property, and has resold the property prior to making any use of it. In the event that the contractor sells short ends or pieces which are not used other than in severing them from larger units purchased by him or her and as to which he or she has paid sales tax reimbursement or use tax, he or she may claim the deduction for tax-paid purchases resold, but the amount of the deduction shall not exceed the price at which he or she sells such short ends or pieces.

(c) Particular Applications.

(1) Draperies and Drapery Hardware. Persons who contract to sell and install draperies including drapery hardware, such as brackets, rods, tracks, etc., are retailers of the items which they furnish and install. Tax applies to the entire contract price exclusive of the charge for installation which charge should be separately stated. Installers who furnish drapery hardware or other tangible personal property may accept resale certificates from department stores or other sellers to furnish and install the draperies and drapery hardware.

The department stores or other sellers furnishing resale certificates are required to pay the tax to the state upon their selling price of the draperies and drapery hardware, exclusive of installation charges. The installer should segregate his or her installation charge in order that the department store or other seller may properly segregate its charge attributable to installation for purposes of determining its taxable gross receipts.

(2) Prefabricated Cabinets. A cabinet will be considered to be “prefabricated” and a “fixture” when 90 percent of the total direct cost of labor and material in fabricating and installing the cabinet is incurred prior to affixation to the realty. In determining this 90 percent, the total direct cost of all labor and materials in fabricating the cabinet to the point of installation will be compared to the total direct cost of all labor and materials in completely fabricating and installing the cabinet. If more than one cabinet is fabricated and installed under the contract, each cabinet will be considered separately in determining whether the cabinet is prefabricated.

(3) Prefabricated Buildings. Prefabricated units such as commercial coaches, house trailers, etc., registered with the Department of Motor Vehicles or the Department of Housing and Community Development, are tangible personal property even though they may be connected to plumbing and utilities. A mobilehome which meets or is modified to meet, all applicable building codes and regulations and which is permanently affixed to realty, is an improvement to realty and is not personal property.

A contract to furnish and install a prefabricated or modular building similar in size to, but which is not, a factory-built school building (relocatable classroom) is a construction contract whether the building rests in place by its own weight or is physically attached to realty. It is immaterial whether the building is erected upon or affixed to land owned by the owner of the building or is leased to the landowner or lessee of the land.

Generally, a contract to furnish and install a small prefabricated building, such as a shed or kiosk, which is movable as a unit from its site of installation, is a construction contract only if the building is required to be physically attached to real property by the seller, upon a concrete foundation or otherwise. The sale of such a unit to rest in place by its own weight, whether upon the ground, a concrete slab, or sills or piers, is not a construction contract even though the seller may deliver the unit to its site of use.

Prefabricated or modular buildings which are “factory-built housing” where permanently affixed to the realty are improvements to realty. The manufacturer of factory-built housing who contracts to furnish and install the factory-built housing manufactured by him or her is the consumer of the materials used in building and installing the factory-built housing and the retailer of the fixtures. Tax applies as provided in (b) above.

(4) Factory-Built School Buildings.

(A) General. On and after September 26, 1989, a contract to furnish and install a factory-built school building is not a construction contract but rather is a sale of tangible personal property.

(B) Definitions.

1. “Factory-built School Building.” The term “factory-built school building” (relocatable classrooms) means and includes:

A. for the period September 26, 1989 through September 12, 1990, any building designed to be used as a school building as defined in Sections 39214 and 81165 of the Education Code and so used. A factory-built school building must be designed in compliance with state laws for school construction and approved by the structural safety section in the office of the State Architect. It must be wholly or substantially manufactured at an offsite location for the purpose of being assembled, erected, or installed on a schoolsite.

B. effective September 13, 1990, any building which is designed or intended for use as a school building and is wholly or substantially manufactured at an offsite location for the purpose of being assembled, erected, or installed on a site owned or leased by a school district or a community college district. A factory-built school building must be designed and manufactured in accordance with building standards adopted and approved pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 of the Health and Safety Code and must be approved by the structural safety section in the office of the State Architect.

The term does not include buildings licensed by either the Department of Motor Vehicles or the Department of Housing and Community Development. The term also does not include prefabricated or modular buildings which are similar in size to, but which are not, "factory-built school buildings". It is immaterial whether the building is erected upon or affixed to land owned by the owner of the building or is leased to the landowner or lessee of the land.

2. "Consumer."

A. For the period September 26, 1989 through September 12, 1990, the term "consumer" as used herein means either (1) a school or a school district or (2) a contractor who purchases a factory-built school building for the purpose of fulfilling the requirements of an existing contract with a school or school district to furnish and install such building.

B. Effective September 13, 1990, the term "consumer" as used herein means either (1) a school district or a community college district or (2) a contractor who purchases a factory-built school building for the purpose of fulfilling the requirements of an existing contract with a school district or a community college district to furnish and install such building.

(C) Place of Sale. The place of sale or purchase of a factory-built school building is the place of business of the retailer regardless of whether the sale of the building includes installation or whether the building is placed upon a permanent foundation.

(D) Application of Tax.

1. Tax applies to 40 percent of the sales price of the building to the consumer excluding any charges for placing the completed building on the site. The sales price of the building shall include amounts representing tangible personal property installed in the building by a subcontractor, whether prior to or after installation of the building at the site, provided such installation is called for in the prime contract for the building. A separate contract to furnish and install tangible personal property in a factory-built school building after installation of the building at the site is a construction contract and tax applies as in (b) above. Any contract or subcontract for site preparation (e.g., foundation) is a construction contract and tax applies as in (b) above.

2. The sale of a factory-built school building to a purchaser who will resell the building without installation is a sale for resale and the seller may accept a resale certificate from the purchaser. If the purchaser then sells to a contractor who has an existing contract to install the building on a school site, tax will apply as in (c)(4)(D)l. above. If tax has been paid on the purchase price of a factory-built school building which is subsequently resold for installation, a tax-paid purchases resold deduction may be taken as provided in Regulation 1701 (18 CCR 1701).

(E) Exclusion Certificate. For the period September 26, 1989, through September 12, 1990, if the purchaser certifies in writing to the retailer that the factory built school building purchased will be consumed in a manner or for a purpose entitling the retailer to exclude 60% of the gross receipts or sales price from the measure of tax and uses the property in some other manner or for some other

purpose, the purchaser shall be liable for payment of tax measured by 60% of the sales price. For the above stated period, all retailers who make retail sales of “factory-built school buildings” claimed to be subject to tax measured by 40 percent of the sales price must obtain from the “consumer” a signed certificate substantially in the form set forth below.

CLAIM FOR 60% EXCLUSION FROM TAX ON
PURCHASE OF FACTORY-BUILT SCHOOL BUILDINGS
(Sec. 6012.6, Rev. & Tax. Code)

I hereby certify that the factory-built school building that I

(Name of Purchaser-Consumer)

am purchasing under the authority of this certificate from

(Name of Retailer)

will be used as a school building as defined in Sales and Use Tax Regulation 1521. My seller's permit number, if any, is _____.

I further certify that I understand and agree that if the property purchased under the authority of this certificate is used by the purchaser for any purpose other than indicated above, the purchaser shall be liable for payment of tax to the State Board of Equalization at the time of such use measured by 60% of the sales price of the factory-built school building.

Signed by _____
(Name of Purchaser)

As: _____
(Owner, Partner, Purchasing Agent, etc.)

Date _____

(5) Mobilehomes Installed for Occupancy as Residences. Operative July 1, 1980, a special measure of sales or use tax is provided for a mobilehome sold to be affixed to realty for occupancy as a residence.

A mobilehome dealer who sells a new mobilehome to a construction contractor to be affixed to land for occupancy as a residence is the "retailer-consumer" of the property and is required to pay tax for the period in which the sale was made by the dealer measured by an amount equal to 75 percent of the retailer-consumer's purchase price of the mobilehome.

A construction contractor who withdraws a new mobilehome from an inventory purchased for resale to be affixed to realty for occupancy as a residence in the performance of a construction contract is required to pay tax measured by 75 percent of the purchase price by his or her mobilehome vendor except where the purchase is made directly from a mobilehome manufacturer. In the absence of satisfactory evidence of the vendor's purchase price it shall be presumed that the measure of tax for the transaction is an amount equivalent to 60 percent of the sales price of the mobilehome to the construction contractor.

A mobilehome manufacturer who sells a new mobilehome directly to a construction contractor for installation to real property for occupancy as a residence is required to pay tax measured by 75 percent of the sales price at which a similar mobilehome ready for installation would be sold by the manufacturer to a retailer-consumer in this state. A construction contractor who withdraws a new mobilehome from an inventory purchased from a manufacturer for resale must pay tax measured by 75 percent of his or her purchase price.

A mobilehome manufacturer who performs a construction contract by permanently affixing a new mobilehome to real property is the consumer of the material and the retailer of fixtures installed by him or her and the tax applies as set forth in paragraph (b) above.

Reference should also be made to the provisions of Regulation 1610.2 for additional interpretative rules relating to custom additions to the mobilehome prior to sale, transfers of nonvehicle items, and the application of the tax to a purchase made from an out-of-state retailer.

(6) Repair Contracts. A contract to repair a fixture in place or a fixture the contractor is required by the contract to reaffix to the realty is a construction contract. Sales or use tax applies to the gross receipts or sales price of the parts sold by a contractor who is a retailer under this provision. Either sales tax or use tax applies to the sales price of the parts sold to or used by a contractor who is a consumer under this provision.

(A) United States Construction Contractors. A United States construction contractor is the consumer of the parts furnished in the performance of a construction contract to repair a fixture.

(B) Construction Contractors Other Than United States Construction Contractors.

1. A contractor is the retailer of the parts furnished in the performance of a construction contract to repair a fixture when the sale price of the parts is billed separately from the repair labor.

2. A contractor is the consumer of the parts furnished in the performance of a lump sum construction contract to repair a fixture.

(7) Elevator Installations. A large number of components are included in the installation of an elevator system. Those portions constituting the cage or platform and its hoisting machinery are fixtures. The balance of the installation, if attached to a structure or other real property will generally be "materials."

Similarly, installation of escalators and moving sidewalks are in part fixtures and in part materials.

Following are examples of components constituting part of the cage or platform and its hoisting machinery, and which are fixtures:

alarm bell	door operator on cab or car	power units and control boxes
cab or car	door safety edge on cab	pumps
car doors	door sills on cab	pushbuttons on cab

car platform and sling	electronic door protector	wire and piping (which are
door hanger on cab	jack assembly	components of a fixture)
door openers	motors	

Following are examples of components constituting “materials” when attached to realty:

car guides	hoistway door sills and jams	sound insulating panels on materials”
casing section of jack assembly	hoistway door supports	structural steel (unless part of cab, car, or other “fixture”)
guide rails	hoistway entrance	hoistway doors
pushbuttons on hoistway	valve strainer	wire and piping attached to “materials”
hoistway door frames	rail buckets	
hoistway door safety edge	sill, struts	

Following are examples of components constituting parts of escalators or moving sidewalks which are fixtures:

staircase	chains	other operating mechanisms
moving sidewalk		sprockets
moving handrails		motors

(8) Telephone Switchboards and Instruments. Telephone switching equipment installed in a building specifically designed to accommodate the equipment or attached to a building or structure in a manner such that its removal would cause damage to the equipment or building in which it is installed will be considered to be “fixtures” under paragraph (a)(5) of this regulation.

Telephone handsets, modular switching equipment and standardized, off-shelf, general purpose switching equipment sold for use in general purpose office buildings constitute machinery and equipment under paragraph (a)(6) of this regulation. Handsets, modular switching equipment and standardized equipment were previously classified as fixtures.

This change in classification shall be applied prospectively only with respect to construction contracts entered into on and after July 1, 1988, by contractors other than United States construction contractors.

(9) Deep-Well Agricultural Pumps. A deep-well agricultural pump is tangible personal property if installed so that it rests in position by force of gravity and is not otherwise affixed to the land.

The pump is a fixture if:

- (A) It is affixed to the land such as by concrete, bolts or screws,
- (B) It is physically connected to an irrigation system such as by pipes or couplings so as to become an integral part of the system, or
- (C) It is enclosed by a pump house or other building or structure .

(10) Remote Control Garage Door Openers. Remote control garage door opening units are fixtures. Portable transmitter units furnished pursuant to a construction contract are deemed to be fixtures and are taxable as provided in subdivision (b)(2)(B). Sales of portable transmitter units not a part of a construction contract, as, for example, sales of replacement units, are retail sales of tangible personal property and subject to tax as such.

(11) Excess Reimbursement. The excess tax reimbursement provisions of Regulation 1700 apply to construction contractors.

(12) On-Premise Electric Signs

(A) An on-premise electric sign is any electrically powered or illuminated structure, housing, sign, device, figure, statuary, painting, display, message, placard, or other contrivance or any part thereof affixed to real property and intended or used to advertise, or to provide data or information in the nature of advertising, for any of the following purposes: 1) To designate, identify, or indicate the name or business of the owner or occupant of the premises upon which the advertising display is located, or 2) To advertise the business conducted, services available or rendered, or the goods produced, sold, or available for sale, upon the property where the advertising display has been erected.

(B) Application of tax. An on-premise electric sign is a fixture and tax applies to the sale price of the sign. Notwithstanding the provisions of 1521(b)(2)(B), operative October 1, 2000, if the contract does not state the sale price of the sign, tax applies to 33 percent of the contract price of on-premise electric signs that are furnished and installed by the seller. "Contract price" includes charges for materials, fabrication labor, installation labor, overhead, profit, and other charges associated with the sale and installation of the sign. If a contract provides that a contractor is to install an on-premise electric sign furnished by a third party, the charges for installation are not taxable. If a seller furnishes but does not install an on-premise electric sign, the seller is a retailer of the sign and tax applies to the total contract price.

Separately stated charges for transportation are subject to tax as defined in Regulation 1628, *Transportation Charges*.

Appendix A The following is a list of typical items regarded as materials:

Asphalt	Linoleum	Steel
Bricks	Lumber	Stone
Builders' hardware	Macadam	Stucco
Caulking material	Millwork	Tile
Cement	Mortar	Wall coping
Conduit	Oil	Wallboard
Doors	Paint	Wallpaper
Ducts	Paper	Wall-to-wall carpeting

Electric wiring and connections	Piping, valves, and pipe fittings	(when affixed to the floor)
Flooring	Plaster	Weather stripping
Glass	Power poles, towers, and lines	Windows
Gravel	Putty	Window screens
Insulation	Reinforcing mesh	Wire netting and screen
Lath	Roofing	Wood preserver
Lead	Sand	
Lime	Sheet metal	

Appendix B The following is a list of typical items regarded as fixtures:

Air conditioning units	Furnaces, boilers, and heating units
Awnings	Lighting fixtures
Burglar alarm and fire alarm fixtures	Plumbing fixtures
Cabinets, counters, and lockers (prefabricated)	Refrigeration units
Cranes ¹ (including moving parts of cranes) affixed or annexed to a building, structure or fixed work	Signs
Electric generators (affixed to and accessory to a building, structure or fixed works)	Television antennas
Elevators, hoists, and conveying units	Transformers and switchgear
	Vault doors and equipment
	Venetian blinds

¹Moving parts of cranes are classified as machinery and equipment when furnished and installed pursuant to fixed price construction contracts entered into prior to July 1, 1985.

Appendix C The following are lists of typical items regarded as:

Machinery and Equipment	Not Machinery or Equipment
Drill presses	Fixtures and materials as defined in this regulation
Electric generators (unaffixed, or, if affixed, which meet the requirements of subparagraph (a)(6))	Wiring, piping, etc., used as a source of power, water, etc., for machinery and equipment
Lathes	Radio transmission antennas
Machine tools	Large tanks (i.e., over 500 barrel capacity)
Printing presses	Fire alarm systems
	Street light standards
	Cooling towers other than small prefabricated cooling units

History: Effective July 1, 1939.

Adopted as of January 1, 1945, as a restatement of previous rulings.

Amended September 2, 1965, applicable as amended September 17, 1965.

Amended and renumbered November 3, 1971, effective December 3, 1971.

Amended February 4, 1976, effective April 1, 1976. Rewrote and expanded regulation for clarity, combined Regulation 1615, added particular applications, and applied Regulation 1521 definition of "fixture" to U. S. Contractors.

Amended August 17, 1976, effective September 19, 1976. Clarified “U. S. Government,” limited exemption certificate, and clarified “generators” in appendices.

Amended December 7, 1978, effective February 18, 1979. Subsections (a)(3), (b)(1)(A), and (b)(1)(B) no longer reference instrumentalities of the United States; subsection (b)(1)(A) was amended to apply sales tax to the sale of tangible personal property to contractors for use on construction contracts with the United States; amends subsection (c)(7) to provide that the section only applies to transactions prior to 1/1/79.

Amended August 1, 1980, effective August 22, 1980, operative July 1, 1980. On first page, added (c)(4) and renumbered following subsections: in (c)(3), first sentence, deleted “mobilehomes” and substituted “commercial coaches”; in third paragraph, deleted “as defined in Regulation 1521.2,” from first sentence, and deleted second sentence; added (c)(4), and renumbered following sections.

Amended November 19, 1980, effective January 16, 1981. In (c)(3) corrected typographical error. In (c)(4), third paragraph, substituted “construction contractor” for “any person”; added “in the performance of a construction contract,” and added exception for purchases made directly from a mobilehome manufacturer; substituted “construction contractor” for “person withdrawing and affixing the property to realty,”. In fourth paragraph, added provision regarding withdrawal by construction contractor of new mobilehome from inventory purchased from a manufacturer.

Amended December 1, 1983, effective April 14, 1984. In (c)(3) added reference to the Department of Housing and Community Development. In (c) added new (c)(8) and renumbered former (c)(8) to (c)(9); deleted former text and added reference to Regulation 1700. Deleted former subdivision (d). In appendix C changed reference to subparagraph (a)(6).

Amended February 5, 1986, effective May 11, 1986. Deletes the term “Moving parts of cranes” as machinery and equipment under Appendix C and adds the term “Cranes” to Appendix B as fixtures with a footnote that moving parts of cranes are classified as machinery and equipment when furnished and installed pursuant to fixed price construction contracts entered into prior to July 1, 1985.

Amended May 3, 1988, effective July 2, 1988. Added subdivision (c)(7) to make clear and specific that certain types of telephone equipment are classified as “fixtures” whereas other types of telephone equipment are classified as “machinery and equipment”. In Appendix B, deleted reference to “telephone switchboards and instruments”.

Amended April 5, 1989, effective June 17, 1989. The change to subdivision (c)(3) provides that construction contracts include contracts to furnish and install a relocatable classroom, or other prefabricated or modular building of similar size, whether the building rests in place by its own weight or is physically attached to the realty. The revised subdivision also provides that a contract to furnish and install a small prefabricated building such as a shed or kiosk, which is moveable

from its installation site, is a construction contract only if the building is required to be physically attached to the realty by the seller.

Amended June 5, 1991, effective August 18, 1991. Modified the definition of the term “factory-built school building” and deleted the provisions relating to the liability of the purchaser for taxes if the building is used for some purpose other than a school. Amended paragraph (c)(3) to remove reference to factory-built school buildings (relocatable classrooms). Added paragraph (c)(4).

Amended February 8, 1995, effective July 16, 1995. Amended subparagraph (c)(6) to include, as subparagraphs (A) and (B), specific examples of how tax applies to both United States contractors and other construction contractors when performing repair construction contracts. Deleted gender-based language from subparagraphs (a)(2) & (3), (b)(2)(A)2., (b)(2)(B)2.b., (b)(4), (b)(6), (c)(3), and (c)(5). Corrected clerical errors in (c)(3) and (c)(4)(E).

Amended November 18, 1998, effective February 13, 1999. Subdivision (a)(2) amended by adding sentence “Construction contractor` ... country.”